

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

C.D. PEACOCK, INC.,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE NEIMAN MARCUS GROUP, INC.,	:	
YURMAN DESIGN, INC.,	:	
	:	
Defendants.	:	NO. 97-5713

MEMORANDUM

Reed, J.

March 9, 1998

Presently before this Court is the motion of plaintiff C.D. Peacock, Inc. (“Peacock”) to remand the action to the Court of Common Pleas of Philadelphia County, Pennsylvania (Document No. 11) for lack of subject matter jurisdiction due to an insufficient amount in controversy. Defendants The Neiman Marcus Group, Inc. (“Neiman Marcus”) and Yurman Design, Inc. (“Yurman”) have filed a response thereto (Document No. 13).

For the following reasons, I conclude that the claims of Peacock may be properly aggregated and thus the jurisdictional amount of \$75,000.00 required by 28 U.S.C. § 1332 is satisfied. Accordingly, I will deny the motion of Peacock to remand the action to state court.

I. FACTUAL AND PROCEDURAL BACKGROUND

The following facts are based upon the well-pleaded allegations of the complaint. See Miree v. DeKalb County, 433 U.S. 25, 27 n.2 (1977).

Peacock, an Illinois corporation with a principal place of business in Illinois, is engaged in the purchase and retail sale of high quality jewelry. Yurman, a corporation with a

principal place of business in New York, is engaged in the design, manufacture, and wholesale distribution of high quality jewelry. Neiman Marcus is a Delaware corporation with a principal place of business in Texas. Neiman Marcus maintains a department store in Northbrook Court, Northbrook, Illinois, at the same facility in which Peacock maintains its jewelry store.

On June 10, 1995, Peacock and Yurman entered into an agreement where Yurman agreed to sell and Peacock agreed to buy for \$11,000.00 various items of jewelry from Yurman's 14K gold collection and from Yurman's silver and gold collection. Yurman subsequently forwarded a written confirmation, including a statement that the items were to be delivered by July 15, 1995. The confirmation was accompanied by a letter which indicated that Peacock's order had already been processed and that any attempts to cancel would not be accepted. Despite Peacock's repeated demands, Yurman failed to deliver Peacock's order.

Peacock alleges, *inter alia*, in its complaint that Neiman Marcus caused Yurman not to perform its agreement for the sale of certain jewelry goods to Peacock but instead to accept an agreement whereby Yurman would establish a jewelry boutique in Neiman Marcus's department store and thus Neiman Marcus would be the exclusive carrier of Yurman jewelry in Northbrook Court.

On August 20, 1997, Peacock filed its complaint in the Court of Common Pleas, Philadelphia County, Pennsylvania alleging one cause of action against Yurman for breach of contract for damages in the amount of \$11,000.00 (Count I), and two causes of action against Neiman Marcus for tortious interference with contract for damages in excess of \$50,000.00 (Count II), and for tortious interference with business relations for damages in excess of \$50,000.00 (Count III).

On September 11, 1997, defendants Neiman Marcus and Yurman removed the case from the state court to the United States District Court for the Eastern District of Pennsylvania. Neiman Marcus filed a motion to dismiss Counts II and III of the complaint (Document No. 3), which this Court denied on November 13, 1997 (Document No. 10).

Thereafter, Peacock filed a motion to remand this action to the Court of Common Pleas of Philadelphia County (Document No. 11), the merits of which I will now analyze.

II. STANDARD OF REVIEW

The removal petition of defendants Yurman and Neiman Marcus asserted that the Court had jurisdiction over this matter based on diversity, pursuant to 28 U.S.C. § 1332. Title 28 U.S.C. § 1332 provides: “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs and is between (1) citizens of different States” 28 U.S.C. § 1332(a)(1).¹ Peacock claims the amount in controversy is not sufficient for federal diversity jurisdiction, and thus removal was improper. Yurman and Neiman Marcus argue that the claims of Peacock were correctly aggregated and thus the jurisdictional amount in controversy is met.

To state it briefly and specifically, the issue before the Court is whether the two claims of Peacock against Neiman Marcus in Counts II and III for tortious interference with contract and for tortious interference with business relations, each seeking damages in an amount in excess of \$50,000.00, may be aggregated to satisfy the requisite jurisdictional amount in

¹ It is apparent from the complaint as well as the notice of removal that the parties are of diverse citizenship for purposes of Section 1332. The parties do not contest this point, and I therefore conclude that the diversity of citizenship element is conclusively established.

controversy.²

The burden is on the removing defendants to show that jurisdiction exists to allow removal of the claim to federal court. See Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 359 (3d Cir.), cert. denied, 116 S. Ct. 564 (1995); Steel Valley Auth. v. Union Switch and Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987), cert. denied sub nom. American Standard, Inc. v. Steel Valley Auth., 484 U.S. 1021 (1988). The defendants' right to remove is to be determined according to the plaintiff's pleading at the time of the petition for removal. Pullman Co. v. Jenkins, 305 U.S. 534, 537, 540 (1939); Abels v. State Farm Fire & Cas. Co., 770 F.2d 26, 29 (3d Cir. 1985). Courts have imposed three different burdens on removing defendants, requiring them to show that the amount in controversy is greater than the jurisdictional amount (1) to a legal certainty, (2) by a preponderance of the evidence, or (3) to a reasonable probability. See Mercante v. Preston Trucking Co., No. 96-5904, 1997 WL 230826, at *1 (E.D. Pa. May 1, 1997). The Court of Appeals for the Third Circuit has not delineated which burden applies. Given that no further guidance has been handed down from the Court of Appeals since that decision, I will apply the same standard as I did in Mercante: "for a defendant to defeat a motion for remand after removing a complaint seeking unspecified damages and originally filed in state court, the defendant must show by a preponderance of the evidence that the plaintiff's claims exceed the

² A single plaintiff's claims against more than one defendant are aggregated to determine the jurisdictional amount in controversy only if the claims are so "integrated" and "tied together by combination or conspiracy, as to make the relief single;" otherwise, "where a plaintiff alleges independent, several liability against more than one defendant, plaintiff's claims against each defendant must individually satisfy the amount in controversy requirement." Cottman Transmission v. Metro Distrib., 796 F. Supp. 838, 841 (E.D. Pa. 1992) (internal quotations omitted), vacated on other grounds, 36 F.3d 291 (3d Cir. 1994).

Peacock's breach of contract claim against Yurman for \$11,000.00 obviously does not, alone, satisfy the jurisdictional amount. Even assuming Peacock's claim against Yurman is so "integrated" with Peacock's claims against Neiman Marcus, it is still necessary that the two tort claims against Neiman Marcus be aggregated to attain the jurisdictional amount. Therefore, the primary issue to be resolved in my analysis is whether the two tort claims in Counts II and II can be properly aggregated.

jurisdictional amount.” Id. at *2.

I should note that the Complaint of Peacock refers to law of the State of Illinois. (See Complaint ¶¶ 16, 23, 32). Also, Peacock and Neiman Marcus applied Illinois law in their earlier briefing with respect to Neiman Marcus’ motion to dismiss. For purposes of this instant motion, I will apply Illinois law, without making a final determination as to the applicable law.

III. LEGAL ANALYSIS

Generally, claims brought by a single plaintiff against a single defendant can be aggregated when calculating the amount in controversy, regardless of whether the claims are related to each other. Snyder v. Harris, 394 U.S. 332, 335 (1969) (“Aggregation has been permitted . . . in cases in which a single plaintiffs seeks to aggregate two or more of his own claims against a single defendant”); Suber v. Chrysler Corp., 104 F.3d 578, 588 (3d Cir. 1997). Two claims cannot be aggregated to satisfy the jurisdictional amount, however, if the plaintiff could not recover for damages for both. See Suber, 104 F.3d at 588. If the two “claims are alternative bases of recovery for the same harm under state law, [plaintiff] could not be awarded damages for both, and a court should not aggregate the claims to arrive at the amount in controversy.” Id.

I find that the claims of Peacock for tortious interference with contract and for tortious interference with prospective business relations against Neiman Marcus, although closely aligned, are qualitatively distinct. See Scheduling Corp. of Am. v. Massello, 456 N.E.2d 298, 303 (Ill. App. Ct. 1983) (“These torts, though closely related, are distinct”).

In order to recover for a claim for intentional interference with a contractual relationship, plaintiff must establish (1) the existence of a valid and enforceable contract between

the plaintiff and a third person; (2) defendant's knowledge of the existing contract; (3) defendant's intentional inducement of the breach; (4) a subsequent breach by the third person; and (5) damage to the plaintiff. See American States Ins. Co. v. Bailey, 675 N.E.2d 939, 942 (Ill. App. Ct. 1996). To state a cause of action for intentional interference with business relations, plaintiff must show (1) a reasonable expectancy of entering into a valid business relationship; (2) the defendant's knowledge of the expectancy; (3) an intentional and unjustified interference by the defendant that induced or caused the breach or termination of the expectancy; and (4) damage to the plaintiff resulting from the defendant's interference. See Anderson v. Varden Dorpel, 667 N.E.2d 1296, 1299 (Ill. 1996).³

The Appellate Court of Illinois succinctly summarizes the two torts in Belden Corp. v. InterNorth, Inc. as follows:

The torts of interference with contractual relations and interference with prospective advantage are closely allied. Both recognize that a person's business relationships constitute a property interest and as such are entitled to protection from unjustified tampering by another. . . . Both causes of action imply a balancing of societal values: an individual has a general duty not to interfere in the business affairs of another, but he may be privileged to interfere, depending on his purpose and methods, when the interference takes a socially sanctioned form, such as lawful competition. . . . The difference between the two torts is that the tort of interference with contractual relations affords a greater degree of protection to the parties to a business relationship. The sacrosanct contractual relation takes precedence over the conflicting rights of any presumptive interferor, including his right to compete and his own prospective advantage. . . .

³ As mentioned earlier, I have referred to Illinois law in my analysis without making a final determination as to applicable law. I note here that Pennsylvania law also recognizes distinct causes of action for tortious interference with contract and tortious interference with business relations. See Thompson Coal Co. v. Pike Coal Co., 412 A.2d 466, 470-71 (Pa. 1979) (acknowledging Pennsylvania cases which recognize torts for interferences with existing contracts and with prospective business relations). The Restatement (Second) of Torts also recognizes a distinction. See Restatement (Second) of Torts §§766, 766A, 766B.

[T]he signal difference between the two torts here considered is the inviolability of the contractual right, and the greater protection given that right. . . . *An individual with a prospective business relationship has a mere expectancy of future economic gain; a party to a contract has a certain and enforceable expectation of receiving the benefits of the contract.*

Belden Corp. v. Internorth, Inc., 413 N.E.2d 98, 101-02 (Ill. App. Ct. 1980) (emphasis added).

Upon a review of the Complaint,⁴ I note that it is inartfully drafted with respect to the significant overlap of similar allegations set forth in Counts II and III. In Counts II and III, Peacock alleges identical damages for “lost profits, loss of existing and prospective customers, and damage to . . . good will and business reputation.” (Complaint ¶¶ 22, 31). Also, in both Counts II and III, Peacock alleges that Neiman Marcus induced Yurman to “establish a jewelry boutique in Neiman Marcus’ department store” (Complaint ¶¶ 20, 29) and that Neiman Marcus attempted to “establish [itself] as the exclusive carrier of Yurman jewelry in Northbrook Court.” (Complaint ¶¶ 21, 30).

Despite these areas of redundancy, there is distinguishing language contained in each alleged tort. In Count II for tortious interference with contract, Peacock alleges that Neiman Marcus “induc[ed] or otherwise persuad[ed] Yurman not to perform its agreement for the sale of certain jewelry goods to C.D. Peacock.” (Complaint ¶ 19). In Count III for tortious interference with business relations, Peacock alleges that Peacock and Yurman had extensive business relations for several years where Peacock sold large quantities of Yurman jewelry and displayed and advertised Yurman goods. Peacock further alleges that Peacock and Yurman agreed to expand business relations by conducting a trunk show of Yurman jewelry at Peacock’s store at a

⁴ Peacock has not presented affidavits or other evidence which would indicate the extent of damages alleged. Thus, the jurisdictional amount analysis is limited to the pleading of Peacock.

future point in November 1995.

I find that the tort claims alleged in Counts II and III are distinct not only as theories of liability, but also in terms of potential recoverable damages. The torts remedy separate harms. Tortious interference with a contract involves a certain and specific expectation of receiving the benefits of a contract already in existence whereas tortious interference with business relations involves expectations of future economic gain. The former relates to past or present damages arising from an identifiable contract, whereas the latter relates to anticipated, future damages arising from a broader ongoing business relationship. Therefore, I conclude that Peacock could recover separate damages for both torts, and thus, these two claims may be properly aggregated. And, because the damages sought for each claim is in excess of \$50,000.00, the requisite jurisdictional amount is clearly satisfied when the two claims are aggregated.

IV. CONCLUSION

For the foregoing reasons, I conclude that the damages sought by Peacock under its claims for tortious interference with contract and tortious interference with business relations remedy distinct harms, and thus the claims may be properly aggregated. The aggregate of the two tort claims against Neiman Marcus equals an amount in excess of \$75,000.00,⁵ and thus the jurisdictional requirements of 28 U.S.C. § 1332(a) are satisfied. Accordingly, I will deny the motion of Peacock to remand this action.

An appropriate Order will be entered.

⁵ The Court exercises its supplemental jurisdiction over the breach of contract claim against Yurman for \$11,000.00 in Count I.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

C.D. PEACOCK, INC.,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE NEIMAN MARCUS GROUP, INC.,	:	
YURMAN DESIGN, INC.,	:	
	:	
Defendants.	:	NO. 97-5713

ORDER

AND NOW, on this 9th day of March, 1998, upon consideration of the motion of plaintiff C.D. Peacock, Inc. to remand the action to the Court of Common Pleas of Philadelphia County, Pennsylvania (Document No. 11), and response of defendants The Neiman Marcus Group, Inc. and Yurman Design, Inc. thereto, and for the reasons articulated in the attached memorandum, it is hereby **ORDERED** that the motion of plaintiff is **DENIED**.

IT IS FURTHER ORDERED that, pursuant to Order of December 17, 1997 of the The Honorable M. Faith Angell, the parties shall contact the chambers of Judge Angell to request a scheduling/status conference.

LOWELL A. REED, JR., J.